

No. 10697

United States
Circuit Court of Appeals
For the Ninth Circuit.

AMELIA DAVIS BLOCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

MAY 26 1944

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

W. H. ORRICK, Esq.,
CHAS. L. BARNARD, Esq.,

For Comm'r:

HARRY R. HORROW, Esq.,

Docket No. 112225

AMELIA DAVIS BLOCH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1942

Aug. 21—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 22—Copy of petition served on General Counsel.

Sept. 16—Answer filed by General Counsel.

Sept. 16—Request for Circuit hearing in San Francisco, Calif. filed by General Counsel.

Sept. 22—Notice issued placing proceeding on San Francisco, Calif. calendar. Service of answer and request made.

1943

Jan. 5—Hearing set Feb. 1, 1943, San Francisco, Calif.

1943

- Feb. 1—Hearing had before Judge Smith on the merits. Consolidated. Stipulation of facts filed. Petitioner's brief due 3-20-43. Respondent's brief due 4-20-43. Reply brief due May 5, 1943.
- Feb. 24—Transcript of hearing 2-1-43 filed.
- Mar. 20—Brief filed by taxpayer. 3-20-43 Copy served on General Counsel.
- Mar. 20—Stipulation for correction of transcript filed.
- Apr. 20—Reply brief filed by General Counsel.
- Apr. 29—Order extending time to June 4, 1943 to file reply brief entered.
- May 31—Order extending time to July 6, 1943 to file reply brief entered.
- July 5—Reply brief filed by taxpayer. 7-5-43 Copy served on General Counsel.
- Aug. 14—Memorandum opinion rendered, Smith, Judge, Div. 5. Decision will be entered under Rule 50. 8-16-43 Copy served.
- Sept. 2—Computation filed by General Counsel.
- Sept. 4—Notice of hearing 10-6-43 under Rule 50.
- Oct. 2—Consent to settlement filed by taxpayer.
- Oct. 5—Decision entered, Smith, Judge, Div. 5.
- 1944
- Jan. 3—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, filed by taxpayer.
- Jan. 11—Affidavit of service by mail filed by taxpayer.
- Feb. 1—Praecipe for record filed by taxpayer and affidavit of service by mail.

1944

- Feb. 12—Certified copy of an order from 9th Circuit extending the time to 3-11-44 to prepare and transmit the record filed.
- Feb. 14—Affidavit of service of petition for review filed.
- Feb. 14—Affidavit of service of the above order from Circuit Court to J. P. Wenchel filed. [1*]

United States Board of Tax Appeals

Docket No. 112225

AMELIA DAVIS BLOCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IRA:90-D-WHL (C:TS:PD-SF:WGW)) dated May 26, 1942, and as the basis of her proceeding alleges as follows:

I

The petitioner is an individual whose mailing address is 343 Sansome Street, San Francisco, Cali-

*Page numbering appearing at top of page of original certified Transcript of Record.

ifornia, and whose residence is 20 Cherry Street, San Francisco, California.

II

The amount of the deficiency determined by the Commissioner against petitioner is \$1,035.53 and is for income taxes [2] for the calendar year ended December 31, 1940. The amount thereof in controversy, as nearly as may be computed, is \$909.82. The collection district in which the return for the period here involved is filed is the First District of California.

III

The notice of deficiency, a copy of which is attached hereto and marked "Exhibit A" was mailed to petitioner on May 26, 1942.

IV

The determination of tax set forth in said notice of deficiency is based upon the following errors:

1. The Commissioner in computing the gain realized from the sale of 212 shares of common stock of The Dow Chemical Company, a Michigan Corporation (hereinafter for convenience called "Dow"), assigned to each said shares a basis derived by dividing (i) the aggregate cost to petitioner of the entire block of 865 shares of preferred stock, \$20 par value, and 250 shares of common stock, without par value, of Great Western Electro-Chemical Company, a California corporation (hereinafter for convenience called "Great Western"), held by petitioner immediately prior to the statutory merger of Great Western with and into Dow by

(ii) 412-3/16, being the number of the entire block of shares of common stock of Dow (of which said 212 shares were a part) acquired by petitioner on said [3] statutory merger.

2. The Commissioner in computing the gain realized from the sale of said 212 shares of common stock of Dow failed to assign as a basis of said 212 shares the basis to petitioner of the identical preferred and common shares of Great Western which on said statutory merger had been constituted, and converted into, said 212 common shares of Dow.

3. The Commissioner in computing the gain realized on the sale of said 212 common shares of Dow failed to identify said shares with, and trace them to, the identical preferred and common shares of Great Western which on said statutory merger had been converted into said 212 shares of Dow.

V

'The facts upon which petitioner relies as sustaining the assignments of error are as follows:

1. Petitioner, on September 29, 1923, acquired 100 shares of preferred stock, \$100 par value, of Great Western at a cost of \$6,500.

2. Petitioner, on January 1, 1926, acquired 13 shares of preferred stock, \$100 par value, of Great Western at a cost of \$845.

3. Petitioner, on March 29, 1929, acquired 46 shares of preferred stock, \$100 par value, of Great Western at a cost of \$3,680. [4]

4. Petitioner, on March 30, 1929, acquired 46

shares of the common stock, \$100 par value, of Great Western at a cost of \$2,300.

5. In 1935 petitioner exchanged the 159 shares of preferred stock, \$100 par value, of Great Western, acquired as set forth in paragraphs 1, 2 and 3 above, for 795 shares of the preferred stock, \$20 par value, of Great Western, represented by certificates numbered P-392-398, inclusive, for 100 shares each and certificate numbered PL-145 for 95 shares.

6. Petitioner, in 1935, exchanged the 46 shares of common stock, \$100 par value, of Great Western, acquired as set forth in paragraph 4 above, for 230 shares of common stock, without par value, of Great Western, represented by certificate numbers 273-274 for 100 shares each, and certificate numbered L-261 for 30 shares.

7. Petitioner, on April 14, 1936, acquired, at a cost of \$1,583.75, 70 shares of preferred stock, \$20 par value, of Great Western, represented by certificate numbered PL-414, and, on March 25, 1938, acquired, at a cost of \$1,006, 20 shares, of the common stock, without par value, of Great Western, represented by Certificate numbered L-1178.

8. Petitioner immediately prior to the statutory merger of Great Western with and into Dow held said certificates numbered P-392-8, inclusive, for 100 shares each, certificate numbered PL 145 for 95 shares, and certificate numbered PL 414 for 70 shares, of the preferred stock, \$20 par value, of [5] Great Western, and certificates numbered 273-274 for 100 shares each, and certificate numbered

L-261 for 30 shares, and certificate numbered L-1178 for 20 shares, of the common stock, without par value, of Great Western.

9. On or before December 31, 1938, Great Western merged with and into Dow under the terms and conditions of an agreement of statutory merger dated the 19th day of November, 1938, and pursuant to the applicable provisions of the laws of the State of California and the State of Michigan, being the respective states pursuant to and under the laws of which Great Western and Dow were incorporated.

10. Article III of said agreement of statutory merger provided that on the effective date thereof each issued share of the preferred stock, \$20 par value, of Great Western (excepting such shares as were held by either Great Western or Dow) should constitute and be converted into $3/16$ ths of one full-paid and nonassessable common share of Dow and each issued share of common stock, without par value, of Great Western (excepting such shares as were held by either Great Western or Dow) should constitute and be converted into one full-paid and nonassessable common share of Dow.

11. Under and by virtue of the aforesaid provisions of Article III of said agreement of statutory merger, on and after the effective date thereof, the aforesaid certificates numbered P 392 to P 398, inclusive, each represented $18-3/4$ [6] shares, said certificate numbered P L 145 represented $17-13/16$ shares, said certificate numbered P L 414 represented $13-2/16$ shares, said certificates numbered 273 and 274 each represented 100 shares, said certificate

numbered L 261 represented 30 shares, and said certificate numbered L 1178 represented 20 shares, of the common stock of Dow.

12. On January 30, 1939, petitioner exchanged said certificates hereinabove referred to for new certificates issued by Dow, as follows:

Certificates originally issued by Great Western	Dow common shares represented thereby on and after merger	New Dow Certificates	Dow common shares represented thereby
P 392-8	131-4/16)	(C 5822	100
PL 145	17-13/16)	(CO 18244	62
PL 414	13-2/16)	(CLF 171	3/16
273-4	200	C 5823-4	200 (100 shares each)
L 261	30)	CO 18245	50
L 1178	20)		

13. On March 4-5, 1940, petitioner sold 212 shares of the common stock of Dow for a total selling price of \$33,264.24, 100 of which said 212 shares were represented by said certificate issued by Dow numbered C 5822 and 62 of which said 212 shares were represented by certificate issued by Dow numbered CO 18244 and 50 of which said 212 shares were represented by certificate issued by Dow numbered CO 18245. [7]

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that the deficiency due from the petitioner for said calendar

year ended December 31, 1938, is not in excess of \$125.71.

W. H. ORRICK

CHAS. L. BARNARD

Counsel for Petitioner.

W. H. Orrick

Chas. L. Barnard

405 Montgomery Street,

San Francisco, Calif.

Of Counsel:

Orrick, Dahlquist, Neff & Herrington,

405 Montgomery Street

San Francisco, California. [8]

State of California,

City and County of San Francisco—ss.

Amelia Davis Bloch, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true.

AMELIA DAVIS BLOCH

Subscribed and sworn to before me this 17th day of August, 1942.

[Seal] HAZEL E. THOMPSON

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires September 21, 1942. [9]

EXHIBIT A

Treasury Department
Internal Revenue Service
74 New Montgomery Street,
San Francisco, California
May 26 1942

Office of
Internal Revenue
Agent in Charge
San Francisco Division

IRA :90-D-WHL
(C:TS:PD
SF:WGW)

Mrs. Amelia Davis Bloch,
343 Sansome Street,
San Francisco, California.

Madam:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1940, discloses a deficiency of \$1,035.53 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return (s) by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By F. M. HARLESS

Internal Revenue Agent in
Charge.

Enclosures:

Statement.

Form of waiver.

RR [10]

San Francisco

IRA:90-D-WHL

(C:TS:PD

SF:WGW)

Mrs. Amelia Davis Bloch,

343 Sansome Street,

San Francisco, California.

Tax Liability for the Taxable Year Ended December 31, 1940

	Liability	Assessed	Deficiency
Income tax	\$34,254.17	\$33,218.64	\$ 1,035.53

In making this determination of your income tax liability, careful consideration has been given to your protest dated December 15, 1941, and to the statements made at the conferences held on January 9, 1942, and February 25, 1942.

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	\$86,932.29
Unallowable deductions and additional income:	
(a) Net long-term gain	\$2,757.04
(b) Salary income	200.00
(c) Fiduciary income	157.50
	3,114.54

Total	\$90,046.83
Nontaxable income and additional deductions:	
(d) Interest on government obligations	157.55

Net income adjusted	\$89,889.28

[11]

EXPLANATION OF ADJUSTMENTS

(a) You acquired 412 $\frac{3}{16}$ shares of common stock of The Dow Chemical Company in exchange for 865 shares of preferred stock and 250 shares of common stock of Great Western Electro-Chemical Company upon the consummation of a merger of the last-named corporation with The Dow Chemical Company. The merger was accomplished on or about December 31, 1938. That transaction was regarded as a reorganization upon which no gain or loss was recognizable for income tax purposes. In 1940 you sold 212 shares of common stock of The Dow Chemical Company, acquired through the above-mentioned reorganization, for \$33,264.24 and claimed a cost basis of \$13,900.17 and reported a capital gain attributable to these sales in the amount of \$10,046.17. It is held that the cost basis of the stock sold is \$8,185.32, and the capital gain attributable to these sales is \$12,803.21, computed as follows:

Cost of preferred and common stock of Great Western Electro-Chemical Company surrendered in exchange for 412 3/16 shares of The Dow Chemical Company.....	\$15,914.75
Cost of 1 share of The Dow Chemical Company.....	\$ 38.61
Cost of 212 shares sold March 4, 5, 1940.....	\$ 8,185.32
Selling price	33,264.24
<hr/>	
Gain before capital gain adjustment.....	\$25,078.92
Cost of stock held between 18 and 24 months.....	\$ 1,006.00
Cost of stock held more then 24 months.....	14,908.75
<hr/>	
Total	\$15,914.75
1006	
_____ x \$25,078.92 equals \$1,582.48	
15,914.75	
Taxable at 66 2/3%	\$ 1,054.99
14,908.75	
_____ x \$25,078.92 equals \$23,496.44	
15,914.75	
Taxable at 50%	11,748.22
<hr/>	
Net taxable gain as revised	\$12,803.21
Net taxable gain as reported	10,046.17
<hr/>	
Increase	\$ 2,757.04

[12]

(b) On your income tax return you claim a deduction of one-half of \$400.00, namely \$200.00, described as salary of secretary, and in your husband's return a similar amount is deducted. This was reported as an offset to your one-half share of your husband's income from salary from Crown Zellerbach Corporation and from fees as a director. The above-mentioned secretary is a regular employee of Crown Zellerbach Corporation. It is held that the amount claimed is not a deduction within the meaning of Section 23(a) of the Internal Revenue Code.

(c) The operating loss of \$157.50 reported by

you as sustained by the trust of which you are a beneficiary is disallowed as not representing an allowable deduction within the meaning of section 23 (a) of the Internal Revenue Code.

(d) In your return you report interest on government obligations amounting to \$4,069.39. Included in that amount is the sum of \$3,938.75 reported as received by you as a beneficiary of a trust created by your husband. It has been determined that the taxable interest on government obligations received by you from the trust amounts to \$3,781.20 and the amount reported reduced accordingly for the excess of \$157.55.

COMPUTATION OF ALTERNATIVE TAX

Net income		\$89,889.28
Minus:		
Net long-term capital gain		12,778.21
		<hr/>
Ordinary net income		\$77,111.07
Less:		
Personal exemption		none
		<hr/>
Balance (surtax net income)		\$77,111.07
Less:		
Interest on Government obligations, etc.	\$3,911.84	
Earned income credit	1,400.00	5,311.84
		<hr/>
Net income subject to normal tax		\$71,799.23
		[13]
Normal tax at 4 percent on \$71,799.23.....		\$ 2,871.97
Surtax on \$77,111.07		24,435.54
		<hr/>
Partial tax		\$27,307.51
Plus:		
30 percent of net long-term gain.....		3,833.46
		<hr/>
Alternative tax		\$31,140.97

COMPUTATION OF TAX

Net income adjusted		\$89,889.28
Less:		
Personal exemption		none
		<hr/>
Balance (surtax net income)		\$89,889.28
Less:		
Interest on government obligation.....	\$3,911.84	
Earned income credit (10% of		
\$14,000.00)	1,400.00	5,311.84
		<hr/>
Net income subject to normal tax.....		\$84,577.44
Normal tax at 4% on \$84,577.44.....		\$ 3,383.10
Surtax on \$89,889.28		31,121.32
		<hr/>
Total tax (ordinary)		\$34,504.42
Total tax (Alternative tax in case of a net long		
term gain)		\$31,140.97
Defense tax—10%		3,114.10
		<hr/>
Total		\$34,255.07
Less: Income tax paid at the source.....		.90
		<hr/>
Correct income tax liability		\$34,254.17
Income tax assessed:		
Original account No. 201815—First California.....		33,218.64
		<hr/>
Deficiency of income tax		\$ 1,035.53

[Endorsed]: U.S.B.T.A. Filed Aug. 21, 1942. [14]

[Title of Board and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition, except that it is denied that the amount in controversy is as alleged in said paragraph.

III. Admits the allegations contained in paragraph III of the petition.

IV—1 to 3, inclusive. Denies that the Commissioner erred as alleged in subparagraphs 1 to 3, inclusive, of paragraph III of the petition.

V—1 to 4, inclusive. Admits the allegations contained in subparagraphs 1 to 4, inclusive, of paragraph V of the petition.

V—5 and 6. Denies the allegations contained in subparagraphs 5 and 6 of paragraph V of the petition. [15]

V—7. Admits that petitioner, on April 14, 1936, acquired, at a cost of \$1,583.75, 70 shares of preferred stock, \$20 par value, of Great Western, and, on March 25, 1938, acquired, at a cost of \$1,006, 20 shares of the common stock, without par value, of Great Western; denies the remaining allegations

contained in subparagraph 7 of paragraph V of the petition.

V—8. Admits that petitioner immediately prior to the statutory merger of Great Western with and into Dow owned 865 shares of preferred stock, \$20 par value, of Great Western, and 250 shares of common stock, without par value, of Great Western; denies the remaining allegations contained in subparagraph 8 of paragraph V of the petition.

V—9. Admits that on or about December 31, 1938, Great Western merged with and into Dow; denies the remaining allegations contained in subparagraph 9 of paragraph V of the petition.

V—10 to 12, inclusive. Denies the allegations contained in subparagraphs 10 to 12, inclusive, of paragraph V of the petition.

V—13. Admits that on March 4 and 5, 1940, petitioner sold 212 shares of the common stock of Dow for a total selling price of \$33,264.24; denies the remaining allegations contained in subparagraph 13 of paragraph V of the petition.

VI. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's

determination [16] be approved and the petitioner's appeal denied.

(signed) J. P. WENCHEL

H. R. H.

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

Alva C. Baird,

Division Counsel;

T. M. Mather,

Harry R. Horrow,

Special Attorneys,

Bureau of Internal Revenue.

HRH:sob 9-9-42

[Endorsed]: U.S.B.T.A. Filed Sept. 16, 1942.

[17]

The Tax Court of The United States

[Title of Cause.]

Docket No. 112225

STIPULATION

It is hereby stipulated by and between the parties hereto, through their respective counsel, that the following facts shall be taken as true and received as evidence in this proceeding, subject to the right of either party to introduce additional evidence not contrary to the facts herein stipulated:—

I

Taxpayer, on September 29, 1923, acquired 100

shares of Preferred Stock, \$100 par value, of Great Western Electro-Chemical Company, (hereinafter for convenience called "Great Western"), at a cost of \$6,500. [18]

II

Taxpayer, on January 1, 1926, acquired 13 shares of Preferred Stock, \$100 par value, of Great Western, at a cost of \$845.

III

Taxpayer, on March 29, 1929, acquired 46 shares of Preferred Stock, \$100 par value, of Great Western, at a cost of \$3,680.

IV

Taxpayer, on March 30, 1929, acquired 46 shares of Common Stock, \$100 par value, of Great Western, at a cost of \$2,300.

V

In 1935 Taxpayer, on the "recapitalization" of Great Western, exchanged the 159 shares of Preferred Stock, \$100 par value, of Great Western, acquired as set forth in paragraphs I, II and III above, for 795 shares of Preferred Stock, \$20 par value, of Great Western, represented by Certificates numbered P392 - 398, inclusive, for 100 shares each, and Certificate PL145 for 95 shares. No gain or loss was recognized on said exchange under Section 112 of the Revenue Act of 1934. [19]

VI

In 1935 Taxpayer, on the "recapitalization" of Great Western, exchanged the 46 shares of Common

Stock, \$100 par value, of Great Western, acquired as set forth in paragraph IV above, for 230 Common Shares without par value of Great Western, represented by Certificates numbered 273 - 274 for 100 shares each, and Certificate L261 for 30 shares. No gain or loss was recognized on said exchange under Section 112 of the Revenue Act of 1934.

VII.

Taxpayer, on April 14, 1936, acquired 70 Preferred Shares, \$20 par value, of Great Western, represented by Certificate No. PL414, at a cost of \$1,583.75. On March 25, 1938, Taxpayer acquired 20 Common Shares without par value, of Great Western, represented by Certificate No. L1178, at a cost of \$1,006.

VIII

Taxpayer, immediately prior to the Statutory Merger of Great Western with and into The Dow Chemical Company, (hereinafter called "Dow"), held Certificates Numbered P392-398 inclusive, each representing 100 Preferred Shares, \$20 par value, of Great Western; Certificate No. PL145 for 95 Preferred Shares, \$20 par value, of Great Western, and [20] Certificate PL414 representing 70 Preferred Shares, \$20 par value, of Great Western; and Certificates Numbered 273-274, each representing 100 Common Shares, no par value, of Great Western; and Certificates No. L261 and L-1178 representing respectively 30 and 50 common shares without par value of Great Western.

IX

On or before December 31, 1938, Great Western merged with and into Dow, under the terms and conditions of an Agreement of Statutory Merger dated November 19, 1938, and pursuant to the applicable provisions of laws of the State of California and the State of Michigan, being the respective states pursuant to and under the laws of which Great Western and Dow were incorporated. There is attached hereto as Exhibit "A" and made a part hereof a copy of said Agreement of Statutory Merger dated November 19, 1938. Immediately prior to the date of said merger, Great Western was engaged, at its plant at Pittsburg, California, in the manufacturing, producing and selling of caustic soda, bleach, chloride of lime, liquid chlorine, zinc chloride and associated products extracted from salt and soda concentrates by the electro-chemical process. At said time Dow Chemical Company manufactured, at its plants at Midland and Mt. Pleasant, Michigan, more than two [21] hundred chemical products, including heavy chemicals, industrial chemicals, industrial chemicals, intermediate chemicals, solvents, dyes, pharmaceutical chemicals, aromatic chemicals, insecticides, metals and alloys. At that time, Dow had affiliated with it the following companies: Ethyl-Dow Chemical Co., Io-Dow Chemical Co., Midland Ammonia Co., Dowell, Inc., Cliff's-Dow Chemical Co. On and after merger, Dow operated the business and assets of Great Western.

X

Under date of January 24, 1939, Taxpayer forwarded to The Cleveland Trust Company the certificates described in paragraph VIII above, under a letter of transmittal in the form attached hereto and marked Exhibit "B"; a copy of said letter of January 11, 1939, referred to in said letter of transmittal is attached hereto as Exhibit "C" and hereby made a part hereof. The Cleveland Trust Company cancelled said certificates so forwarded by Taxpayer and issued to Taxpayer the following numbered certificates of Dow, respectively in lieu of the following numbered certificates of Great Western so forwarded by Taxpayer:

Dow Certificates Issued	Dow Common Shares Represented Thereby	Great Western Certificates Cancelled
C5822	100 shares)	(P392 - 398
C18244	62 shares)	(PL145
CLF171	3/16ths)	(PL414
C5823	100 shares	273
C5824	100 shares	274
CO18245	50 shares)	(L261
)	(L1178

[22]

XI

In March, 1940, Taxpayer sold 212 Common Shares of Dow for a total selling price of \$33,264.24, 100 of which said 212 shares were represented by said Dow Certificate C5822 and 62 of which said 212 shares were represented by Dow Certificate CO18244 and 50 of which said 212 shares were represented by Dow Certificate CO18245.

Dated: January 30, 1943.

W. H. ORRICK

CHARLES L. BARNARD

Counsel for Petitioner.

J. P. WENCHEL

Chief Counsel

Bureau of Internal Revenue.

[23]

EXHIBIT "A"

Agreement of Statutory Merger (hereinafter called "this Agreement"), dated as of the 19th day of November, 1938, by and between The Dow Chemical Company, a corporation of the State of Michigan (hereinafter called the "Resulting Corporation") and its directors or a majority thereof, parties of the first part, and Great Western Electro-Chemical Company, a corporation of the State of California (hereinafter called "Great Western") and its directors or a majority thereof, parties of the second part.

Whereas, the Resulting Corporation is a corporation duly organized and existing under the laws of the State of Michigan; and Great Western is a corporation duly organized and existing under the laws of the State of California; and said two corporations, (being together hereinafter sometimes called the "constituent corporations") are authorized by their respective Articles of Association and Articles of Incorporation to carry on substantially the same or similar kinds of business; and

Whereas, the principal office and the registered

Exhibit "A"—(Continued)

office in the State of Michigan of the Resulting Corporation is in the City of Midland, in the County of Midland; and the principal office and place of business in the State of California of Great Western is at No. 9 Main Street, in the City and County of San Francisco; and

Whereas, the original Articles of Association of the Resulting Corporation were filed in the office of the Secretary of State of the State of Michigan on May 22nd, 1897; and the original Articles of Incorporation of Great Western were filed in the office of the Secretary of State of the State of California on January 10th, 1916; and

Whereas, under its Articles of Association filed in the office of the Secretary of State of the State of Michigan on May 22nd, 1897, and Articles filed June 25, 1925, continuing the corporate existence for a term of thirty years from May 18, 1927, as subsequently amended, the Resulting corporation has an authorized capital stock consisting of: 60,000 shares of 5% cumulative Preferred Stock of the par value of \$100 each, all of which shares have been duly issued and at the date hereof are outstanding; and 2,000,000 shares of Common Stock without par value, of which 945,000 shares have been duly issued and at the date hereof are outstanding; and [24]

Whereas, under its Articles of Incorporation filed in the office of the Secretary of State of the State of California on January 10th, 1916, as subsequently amended, Great Western has an authorized capital stock consisting of: 125,000 shares of 6%

Exhibit "A"—(Continued)

cumulative Preferred Stock of the par value of \$20 each, of which 94,550 shares have been duly issued and at the date hereof are outstanding; and 125,000 shares of Common Stock without par value, of which 69,260 shares have been duly issued and at the date hereof are outstanding; and

Whereas, the respective Boards of Directors of the constituent corporations deem it advisable for the purpose of greater efficiency and economy in management and in other respects for the general welfare and advantage of said constituent corporations and their respective stockholders that said constituent corporations effect a statutory merger pursuant to a Plan of Reorganization, and said constituent corporations, respectively, desire to effect a statutory merger pursuant to such Plan of Reorganization and pursuant to the applicable provisions of the laws of the State of Michigan and the State of California, as respectively amended and supplemented;

Now Therefore, in consideration of the premises and of the mutual agreements, provisions, covenants and grants herein contained, the parties hereto hereby adopt and agree upon a Plan of Reorganization by statutory merger of said constituent corporations, as follows:

The parties hereto hereby agree, in accordance with the applicable provisions of said laws of the State of Michigan and of the State of California, as respectively amended and supplemented, that the constituent corporations shall effect a statutory merger, and be merged into one of such constituent

Exhibit "A"—(Continued)

corporations, to-wit, The Dow Chemical Company, the Resulting Corporation, and that the Resulting Corporation shall merge into itself Great Western; and that the terms and conditions of the merger hereby agreed upon (hereinafter called the "merger") and the mode of carrying the same into effect are, and shall be, as hereinafter set forth, that is to say:

Article I.

Except as hereinafter otherwise specifically set forth, the corporate name of the Resulting Corporation, to-wit, The Dow Chemical Company, and its identity, existence, [25] purposes, powers, objects, franchises, rights and immunities shall continue un-effected and unimpaired by the merger and the corporate franchises, entity, existence and rights of the other corporation party hereto, to-wit: Great Western, shall be merged into the Resulting Corporation, and the Resulting Corporation shall be fully vested therewith. The existence of Great Western, except in so far as it may be continued by statute, shall cease as soon as this Agreement shall have been adopted or approved by the requisite votes of holders of the capital stock of each of said constituent corporations in accordance with the provisions of this agreement and in accordance with the applicable provisions of the laws of the respective states under which said constituent corporations were formed and upon the doing of such other acts or things as shall be required for accomplishing the Statutory Merger by the laws of the respective states under which said constituent

Exhibit "A"—(Continued)

corporations were formed; and thereupon said constituent corporations shall be merged into one of said constituent corporations, to-wit: said The Dow Chemical Company, the Resulting Corporation, one of the parties of the first part hereto; and

It is agreed that the meeting of stockholders of the respective constituent corporations for the adoption or rejection of this agreement shall be held on December 22, 1938, or on such later date as shall be mutually agreed upon by a majority of the Board of Directors of each constituent corporation and that forthwith upon the approval of this agreement by the stockholders of the constituent corporations, the officers and directors of the respective constituent corporations will take all necessary steps required by the applicable statutes to effectuate the merger. Said constituent corporations shall be deemed merged upon the doing by them and each of them and by their respective Boards of Directors, officers and shareholders of all the acts and things required by the laws of the States of California and Michigan for the effectuation of a statutory merger of a domestic and a foreign corporation, including the filing in the office of the Secretary of State of the State of Michigan of the documents specified in Section 52 of the Michigan General Corporation Act and the filing in the office of the Secretary of State of the State of California of the documents specified in Sections 361 and 361-a of The Civil Code of the State of California. The date upon which said constituent corporations

Exhibit "A"—(Continued)

shall be so merged is hereinafter referred to as "the effective date of this agreement."

Article II.

The laws of the State of Michigan are hereby selected as the laws which shall govern the Resulting Corporation. The Articles of Association and By-Laws of The Dow Chemical Company, [26] as amended prior to the date of this Agreement, and as may be further amended hereafter pursuant to law, shall be and continue to be the Articles of Association and By-Laws of the Resulting Corporation; and the directors and officers of The Dow Chemical Company on the effective date of this Agreement shall continue to be the directors and officers of the Resulting Corporation, until their successors shall be elected and qualified.

Article III.

The mode of carrying the Merger into effect and the manner and basis of causing the shares of stock, and all rights in respect thereof, of Great Western outstanding as of the effective date of this Agreement, to constitute or to be converted, forthwith upon the effective date of this Agreement, into shares of the Resulting Corporation, are as follows:

Subdivision A: Each issued share of 6% cumulative Preferred Stock, \$20 par value, of Great Western, except shares held by a constituent corporation, shall constitute and be converted into three-sixteenths (3/16th) of one (1) full-paid and non-assessable share of Common Stock without par value of the Resulting Corporation.

Each issued share of Common Stock without

Exhibit "A"—(Continued)

par value of Great Western, except shares held by a constituent corporation, shall constitute and be converted into one (1) full-paid and non-assessable share of Common Stock without par value of the Resulting Corporation.

As soon as practicable after the effective date of this agreement the Resulting Corporation will deliver to holders of certificates, which represent shares of the Capital Stock of Great Western, in full satisfaction of all rights evidenced by such certificates (except those holders who shall not have approved of the Merger and who shall have demanded the fair market value of their shares as provided by law), certificates representing shares of its Common Stock without par value in exchange, on the basis hereinabove set forth, for and against the surrender for cancellation of certificates which represent shares of the capital stock of Great Western, duly endorsed in blank, if required, to the Resulting Corporation at such place as may be designated by the Resulting Corporation.

Upon approval of this Agreement by the stockholders of the Resulting Corporation and Great Western, the Resulting Corporation agrees forthwith to take appropriate steps to list upon the New York and Cleveland Stock Exchanges and register for listing thereon under the Securities Exchange Act of 1934 the additional shares of its stock which are required to be delivered to the shareholders of Great Western. [27]

No fractions of shares of Common Stock of the Resulting Corporation shall be issued upon the

Exhibit "A"—(Continued)

conversion of 6% cumulative Preferred Stock of Great Western into Common Stock of the Resulting Corporation on the basis hereinabove set forth, but the Resulting Corporation shall, in lieu of fractional shares, issue non-voting and non-dividend paying scrip certificates, running in favor of the bearer thereof, entitling each holder of such scrip certificates to receive (on surrender thereof within one (1) year after the effective date of this Agreement, together with other scrip certificates of like tenor, representing rights in respect to one or more full shares of Common Stock of the Resulting Corporation) a certificate for the number of shares of Common Stock of the Resulting Corporation, equal to the number of full shares of Common Stock of the Resulting Corporation, represented by such scrip certificates. All such scrip certificates which are not surrendered within the time aforesaid shall be void and of no effect whatsoever on and after a date which shall be one (1) year after the effective date of this Agreement, except that the holders thereof shall be entitled to receive upon surrender thereof their pro rata portion of the proceeds resulting from the sale (which may be effected publicly or privately at their currently prevailing prices) of the full shares of stock of the Resulting Corporation representing such unsurrendered scrip certificates; such sale to be made by the transfer agent of the shares with respect to which such scrip certificates were issued, as agent for and on behalf of the holders of such scrip certificates.

Exhibit "A"—(Continued)

If prior to the effective date of this Agreement the constituent corporations shall acquire in any manner any shares of stock of any class of Great Western, then on said date such shares shall be cancelled and all rights in respect thereof shall cease.

Subdivision B: The shares of 5% cumulative Preferred Stock, \$100 par value, and Common Stock without par value of The Dow Chemical Company outstanding upon the effective date of this Agreement shall continue to be outstanding as shares of the Resulting Corporation and the certificates representing such shares shall not be surrendered nor shall the holders of said certificates receive any other shares or certificates by reason of this Agreement.

Article IV.

On the effective date of this Agreement, as provided in and by the applicable statutes, all and singular the rights, [28] privileges, powers and franchises, as well of a public as of a private nature, of Great Western, and all property, real, personal and mixed, of Great Western, and all debts due to Great Western on whatever account, and all other things in action or belonging to Great Western, shall be vested in the Resulting Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest of Great Western, shall be thereafter as effectually the property of the Resulting Corporation as they were of Great Western, and the title to any real or personal property, whether by deed or other-

Exhibit "A"—(Continued)

wise, vested in Great Western, shall not revert or be in any way impaired by reason of the Merger; Provided that all rights of creditors and all liens upon the property of Great Western shall be preserved unimpaired and all debts, liabilities and duties of Great Western shall thenceforth attach to said Resulting Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. And the parties of the second part hereto hereby agree that from time to time, as and when requested by the Resulting Corporation, or by its successors or assigns, they will execute and deliver or cause to be executed and delivered all such deeds and other instruments, and will take or cause to be taken such further or other action, as the Resulting Corporation may deem necessary or desirable, in order to vest in and confirm to the Resulting Corporation title to and possession of all said property, rights, privileges, powers and franchises and otherwise to carry out the intent and purpose of this Agreement.

Article V.

The Resulting Corporation shall pay all expenses of carrying this Agreement into effect and of accomplishing the Merger.

Article VI.

The Resulting Corporation agrees that, from and after the effective date of this Agreement, it may be served with process in the State of California in any proceeding for enforcement of any obliga-

Exhibit "A"—(Continued)

tion of Great Western; and the Resulting Corporation will upon the effective date of this Agreement designate some person residing within the State of California upon whom process directed to the Resulting Corporation in such a proceeding may be served, and the complete business or residence address of such person, and give its irrevocable consent to such service and the Resulting Corporation hereby agrees that, in the absence of such designation, service of such process on the Secretary of State of the State of California shall be [29] deemed to be due service upon the Resulting Corporation.

Article VII.

This Agreement shall be submitted to the stockholders of each of the constituent corporations as provided by law and it shall take effect and be deemed and taken to be the Agreement and act of Merger of said corporations upon the adoption thereof by the votes, given in person or by proxy, of holders of shares of the capital stock of each of said constituent corporations in accordance with the requirements of the laws of the state under the laws of which each was formed at a meeting of the stockholders of each of said constituent corporations held for the purpose of considering and voting for the adoption or rejection of this Agreement, and upon the doing of such other acts and things as shall be required for accomplishing the Merger by the applicable provisions of said laws of the State of Michigan and of the State of California, as respectively amended and supplemented.

Exhibit "A"—(Continued)

wise, vested in Great Western, shall not revert or be in any way impaired by reason of the Merger; Provided that all rights of creditors and all liens upon the property of Great Western shall be preserved unimpaired and all debts, liabilities and duties of Great Western shall thenceforth attach to said Resulting Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. And the parties of the second part hereto hereby agree that from time to time, as and when requested by the Resulting Corporation, or by its successors or assigns, they will execute and deliver or cause to be executed and delivered all such deeds and other instruments, and will take or cause to be taken such further or other action, as the Resulting Corporation may deem necessary or desirable, in order to vest in and confirm to the Resulting Corporation title to and possession of all said property, rights, privileges, powers and franchises and otherwise to carry out the intent and purpose of this Agreement.

Article V.

The Resulting Corporation shall pay all expenses of carrying this Agreement into effect and of accomplishing the Merger.

Article VI.

The Resulting Corporation agrees that, from and after the effective date of this Agreement, it may be served with process in the State of California in any proceeding for enforcement of any obliga-

Exhibit "A"—(Continued)

tion of Great Western; and the Resulting Corporation will upon the effective date of this Agreement designate some person residing within the State of California upon whom process directed to the Resulting Corporation in such a proceeding may be served, and the complete business or residence address of such person, and give its irrevocable consent to such service and the Resulting Corporation hereby agrees that, in the absence of such designation, service of such process on the Secretary of State of the State of California shall be [29] deemed to be due service upon the Resulting Corporation.

Article VII.

This Agreement shall be submitted to the stockholders of each of the constituent corporations as provided by law and it shall take effect and be deemed and taken to be the Agreement and act of Merger of said corporations upon the adoption thereof by the votes, given in person or by proxy, of holders of shares of the capital stock of each of said constituent corporations in accordance with the requirements of the laws of the state under the laws of which each was formed at a meeting of the stockholders of each of said constituent corporations held for the purpose of considering and voting for the adoption or rejection of this Agreement, and upon the doing of such other acts and things as shall be required for accomplishing the Merger by the applicable provisions of said laws of the State of Michigan and of the State of California, as respectively amended and supplemented.

Exhibit "A"—(Continued)

Article VIII.

It is agreed that the Resulting Corporation shall not, after the date hereof and prior to the effective date of this Agreement, declare or pay any dividend or make any distribution to holders of its Common Stock, except dividends heretofore declared, and the Great Western shall not, after the date hereof and prior to the effective date of this Agreement, declare or pay any dividend or make any distribution to holders of its Preferred or Common Stock, except dividends heretofore declared.

In Witness Whereof, the constituent corporations have caused this Agreement to be signed in their respective corporate names by their respective Presidents or one of their respective Vice-Presidents and their respective Secretaries or one of their respective Assistant Secretaries, and their respective corporate seals to be hereunto affixed and attested, and a majority of the directors of each of said corporations have duly subscribed their names to this Agreement, all as of the day and year first above written.

[Seal] THE DOW CHEMICAL COM-
 PANY

By WILLARD H. DOW,
President.

And by EARL W. BENNETT,
Secretary.

Exhibit "A"—(Continued)

E. O. BARSTOW
EARL W. BENNETT
J. S. CRIDER
WILLARD H. DOW
JAMES T. PARDEE
C. J. STROSACKER
W. R. VEAZEY
LELAND I. DOAN

Being a majority of the Directors of The Dow Chemical Company. [30]

[Seal]

GREAT WESTERN ELECTRO-CHEMICAL COMPANY

By J. F. C. HAGENS,
President.

And by M. FLEISHHACKER, JR.,
Secretary.

LOUIS BLOCH
M. FLEISHHACKER
M. FLEISHHACKER, JR.
MARK L. GERSTLE
J. F. C. HAGENS
CHAFFEE E. HALL
C. W. SCHEDLER
J. F. SHUMAN
JOHN G. SUTTON

Being a majority of the Directors of Great Western Electro-Chemical Company.

(Certifications, County Clerk's Certificates and Certifications omitted.) [31]

EXHIBIT "B"

Letter of Transmittal

To Accompany Certificates for Shares of Capital
Stock of Great Western Electro-Chemical Company

Before Executing Please Read Carefully
the Instructions on the Reverse Hereof

....., 1939

The Cleveland Trust Company, Agent
916 Euclid Avenue
Cleveland, Ohio

Gentlemen:

Receipt of the printed letter dated January 11, 1939 from the President of The Dow Chemical Company to the shareholders of Great Western Electro-Chemical Company is acknowledged. The undersigned encloses herewith for surrender the following certificate(s) for shares of Capital Stock of Great Western Electro-Chemical Company:

Certificate No.	No. of Shares	Name in Which Registered
Preferred
.....
Common
.....

It is understood that at the earliest practicable time after receipt of the above listed stock certificate (s) you will deliver, as indicated below, certificate(s) representing whole shares of common stock without par value of The Dow Chemical Company, (a) in the ratio of 3/16ths of a share of such stock for each share of 6% cumulative preferred stock, \$20 par value, of Great Western

Electro-Chemical Company represented by the enclosed stock certificate(s) [together with non-voting and non-dividend paying scrip certificate(s) for the fractional share, if any, of such stock to which the undersigned would otherwise be entitled], and (b) in the ratio of one share of such stock for each share of common stock without par value of Great Western Electro-Chemical Company represented by the enclosed stock certificate(s).

Kindly issue stock certificate(s), and scrip certificate(s), if any, as follows:

Name.....

(Print name in full)

Address.....

(Street and Number)

.....

(City) (State) [32]

and deliver same as follows:

[] against window receipt
check one or
[] by registered mail to:

(Fill in only if you desire certificate to be mailed)

Please Leave Blank Name
Receipt Issued (Print Name in Full)
Approved Address
Certificates Issued (Street and Number)
.....
..... (City) (State)
..... Signature
Date Delivered (Presentor Signs)

(Reverse side of Letter of Transmittal)

Instructions

- 1. The certificates must be duly endorsed in blank for transfer or accompanied by proper in-

struments of transfer in blank. The signature must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement or any change whatever, and the signature must be properly guaranteed by a Cleveland or New York City bank or trust company, or a bank or trust company having a Cleveland or New York City correspondent, or a brokerage firm having membership in the New York Stock Exchange or the Cleveland Stock Exchange.

2. If the certificates for shares of common stock without par value of The Dow Chemical Company are to be issued in a name other than the name set forth in the surrendered certificates, this letter of transmittal must be accompanied by appropriate Federal transfer tax stamps or funds sufficient to purchase the same in the amount of: 5c for each \$100 of par value, or fraction thereof, of the preferred shares, \$20 par value each; and 5c for each share of common stock without par value surrendered if sale price is \$20 or more per share. Note: if sale price is less than \$20 per share (either class) or if transfer does not constitute a sale, the above tax rate shall be 4c instead of 5c.

3. If your shares are pledged as collateral for a loan with a bank or a broker, it is suggested that you arrange with such bank or broker to forward the certificates therefor.

4. Certificates presented by executors, administrators, trustees and other fiduciaries must be accompanied by proper evidence of authority.

5. Certificates should be forwarded by registered mail to The Cleveland Trust Company, Corporate Trust Department, 916 Euclid Avenue, Cleveland, Ohio. [33]

EXHIBIT "C"

The Dow Chemical Company

Midland, Michigan, U. S. A.

January 11, 1939

To the Shareholders of

Great Western Electro-Chemical Company:

You are hereby notified that the agreement of statutory merger between The Dow Chemical Company and Great Western Electro-Chemical Company has become effective and, pursuant to its provisions, the holders of shares of 6% cumulative preferred stock, (illegible) par value each, of Great Western Electro-Chemical Company are entitled to receive 3/16ths of a share of common stock without par value of the Dow Chemical Company for each shares of said preferred stock so held by them respectively, and the holders of common stock without par value of Great Western Electro-Chemical Company are entitled to receive one share of common stock without par value of the Dow Chemical Company for each share of common stock of Great Western Electro-Chemical Company so held by them respectively, upon the surrender for cancellation of certificates representing shares of Great Western Electro-Chemical Company duly endorsed in blank.

The Cleveland Trust Company, Cleveland, Ohio, has been authorized and instructed to issue certifi-

cates for shares of the common stock of the Dow Chemical Company in exchange for stock certificates of Great Western Electro-Chemical Company in manner above provided upon surrender of such certificates. Scrip certificates will be issued in lieu of fractional shares and the Company will endeavor to arrange for the sale or purchase of scrip certificates to accommodate their holders. You will be fully advised of any such arrangement when scrip certificates are issued. An addressed envelope and form of letter of transmittal are enclosed for your convenience in mailing stock certificates for exchange. Please read carefully the instructions on reverse side of letter of transmittal and make certain that signatures are guaranteed in the manner indicated by these instructions.

The Board of Directors of the Dow Chemical Company intends to declare a dividend on common stock payable on February 15 to stockholders of record at the close of business on February 1, 1939, and to avoid confusion and unnecessary accounting desires that the exchange of certificates be completed at the earliest practicable date. Your cooperation will be appreciated.

Very truly yours,
THE DOW CHEMICAL
COMPANY
WILLARD H. DOW,
President

[Endorsed]: T. C. U. S., Filed Feb. 1, 1943. [34]

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE

U. S. BOARD OF TAX APPEALS

Docket No. 112224

Docket No. 112225

In the Matter of

LOUIS BLOCH and
AMELIA DAVIS BLOCH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Hearing at San Francisco California

Date February 1, 1943 [35]

[Title of Tax Court and Cause.]

REPORTER'S MINUTES

Hearing at Federal Court Room No. 401,
Civic Auditorium, San Francisco, California,
on the 1st day of February, 1943, at
11-10 o'clock A. M.

The above-entitled proceeding came on for hearing on this 1st day of February, 1943, before the Honorable Charles P. Smith, Judge, The Tax Court of the United States at San Francisco, California

pursuant to notice of hearing heretofore given, whereupon the following proceedings were had, to-wit:

Appearances:

CHARLES L. BARNARD (405 Montgomery Street
San Francisco, California)

Appearing on behalf of Petitioners.

HARRY R. HORROW, (Honorable J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue),
appearing on behalf of Commissioner of In-
ternal Revenue, Respondent. [36]

PROCEEDINGS

Judge Smith: Docket No. 112224, Louis Bloch and Docket No. 11225, Amelia Davis Bloch, I believe it was said that there was no evidence to offer. Is that correct?

Mr. Barnard: That is correct. The government and petitioners have entered into a stipulation of facts, your Honor, but there is one additional point to be covered by a stipulation made of record.

At the time the petition was filed there were certain deductions that were disallowed on the Higgins case. Since the petition was filed the Higgins case has been, in effect, overruled by the 1942 Act provision and in order to save our rights a stipulation is to be read into the record that this deduction shall be allowed in part. Mr. Horrow has the computation on that.

Mr. Horrow: If your Honor please, we are prepared to stipulate that the taxpayer in the case of

Louis Bloch paid during the taxable year \$200 as secretarial expense and \$60 for expense in connection with a safe deposit box and that the portion of said total amount of \$260 which is allowable as a deduction under Section 121 of the Revenue Act of 1942 is the proportion which the tax exempt interest received by the Taxpayer during the year 1940 in the amount of \$11,781.88 bears to the total amount of income, taxable and non-taxable, received by the taxpayer during the taxable year. The total [37] taxable income received consists of dividends in the amount of \$67,408.77, interest in the amount of \$445.54 and gross capital gains in the amount of \$29,937.01. The latter amount is still in issue, your Honor, so we cannot stipulate as to the exact amount allowable under the Revenue Act of 1942 for the reason that the amount of capital gains is subject to a determination by your Honor on the basis of the stipulation of facts to be filed.

The figures with respect to Amelia Davis Bloch are as follows:

Taxpayer paid the same amount, \$200 for secretarial expense, and that we stipulate that a portion of that is allowable as a deduction under Section 121 of the Revenue Act of 1942 to be based on the proportion which the tax exempt interest received by the taxpayer during the taxable year in the amount of \$11,867.32 bears to the total income received during that year, both taxable and non-taxable; the taxable income being interest in the amount of \$3,956.84, dividends in the amount of \$47,062.02, and capital gains in the amount of

\$25,078.92. The latter amount is still in dispute because an issue remains as to the amount of capital gains realized by the taxpayer during the year.

Mr. Barnard: There is an ambiguity in the statement of counsel for the government, but I think we both mean the same thing: that there will be disallowed of the amounts paid [38] only such portion as the exempt interest bears to the total income.

Is that correct, Mr. Horrow?

Mr. Horrow: That is correct, your Honor, the total income as finally determined in these matters.

Mr. Barnard: Your Honor, the main question here involves the point as to whether the rule of the Fleischmann case on the identification is applicable to a statutory merger. As far as petitioner is concerned we *would must* as well let the matter be submitted on brief and the stipulation of facts, if that is satisfactory to counsel for the government.

Mr. Horrow: That is satisfactory, your Honor.

Judge Smith: You mean a further stipulation of facts?

Mr. Barnard: No. There is a stipulation of facts that will be submitted herein.

Judge Smith: And counsel desire to file briefs in the case?

Mr. Barnard: Yes. 45, 30, and 15.

Mr. Horrow: I should like to file a stipulation of facts in these cases, your Honor.

Mr. Barnard: Yes.

Mr. Horrow: I now file the stipulation in the case [39] of Louis Bloch and ask that it be received.

Judge Smith: The stipulation of facts will be received.

Mr. Horrow: I also file the stipulation of facts in the case of Amelia Davis Bloch.

Judge Smith: That stipulation of facts is also received.

Mr. Horrow: Has your Honor set the date for briefs?

Judge Smith: Yes. Counsel for the petitioners may have until March 20th. State for the record the name of the petitioners' counsel.

Mr. Barnard: Charles L. Barnard.

Judge Smith: Have you filed an appearance slip in the case?

Mr. Barnard: Yes. I am appearing of record.

Judge Smith: Counsel for the petitioners then may have until March 20th for the filing of a brief.

Mr. Barnard: Thank you.

Judge Smith: The respondent may have until April 20th for the filing of a brief and then the petitioners' counsel may have until May 5th for the filing of a reply, if he desires to file any reply.

Mr. Horrow: Thank you, your Honor.

(Hearing concluded)

[Endorsed]: T. C. U. S. Filed Feb. 24, 1943.

[40]

The Tax Court of the United States

[Title of Causes.]

Docket Nos. 112224, 112225

W. H. ORRICK, Esq., and
CHARLES L. BARNARD, Esq.,
for the petitioners.

HARRY R. HORROW, Esq.,
for the respondent.

MEMORANDUM OPINION

Smith, Judge: These proceedings, consolidated for hearing, are for the redetermination of income tax deficiencies for the calendar year 1940 in the amounts of \$451.13 and \$1,035.53, respectively. The issue presented is whether the respondent erred in determining the basis of certain shares of stock of the Dow Chemical Co. sold by the petitioners during the taxable year by averaging the cost of shares of Great Western Electro-Chemical Co. which were exchanged by petitioners therefor in a nontaxable reorganization. [41]

The parties have stipulated that the petitioners are entitled to additional deductions under section 121 of the Revenue Act of 1942, the final amounts to be computed after a determination of the taxable income resulting from the transactions here in question.

All of the facts have been stipulated.

The petitioners are residents of California and filed their income tax returns for 1940 with the

collector of internal revenue for the first district of California.

In 1940 the petitioner Louis Bloch sold 215 common shares of Dow Chemical Co., hereinafter called Dow, for a total selling price of \$33,525.02 and petitioner Amelia Davis Bloch sold 212 like shares for a total selling price of \$33,264.24. These certificates were received by the petitioners in 1939 under a statutory merger of Great Western Electro-Chemical Co., hereinafter called Great Western, a California corporation, and Dow, a Michigan corporation. The shares of Dow sold by the petitioners in 1940 are traceable through stock certificate numbers to specific shares of Great Western which were turned in in exchange. The cost to petitioner Louis Bloch of the Great Western shares later represented by the Dow shares sold was \$5,685.86 and the cost of the 212 shares of such stock sold by petitioner Amelia Davis Bloch was \$13,900.17. They used such cost bases in determining the capital gains attributable to the sales made by them.

In his determination of the deficiencies the respondent has held that the petitioners may not use such cost bases but must use in lieu thereof the cost of each Dow share determined by dividing the total cost of the Great Western shares acquired by each at different times and different [42] prices by the total number of Dow shares received and then multiplying that amount by the number of Dow shares sold by each.

The only question presented for decision relates to the basis. No contention is made that the peti-

tioners' bases used are not correct provided they may trace the Dow shares sold by specific certificate numbers to the Great Western shares purchased.

There is no question but that the Dow shares were received by the petitioners in 1939 upon a reorganization under section 112 (g) (1) I.R.C. Neither is there any question but that the following portion of section 113 I.R.C. is applicable in the determination of the basis of the shares:

Sec. 113. Adjusted Basis for Determining Gain or Loss.

(a) Basis (Unadjusted) of Property.—The basis of property shall be the cost of such property; except that—

* * * * *

(6) Tax-free exchanges generally.—If the property was acquired, after February 28, 1913, upon an exchange described in section 112 (b) to (e), inclusive, the basis (except as provided in paragraphs (15), (17), or (18) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. * * *

The respondent contends that no identification of the shares of Dow stock received in exchange for Great Western shares is permissible and that the basis of the Dow shares should be computed by di-

viding the total cost of the Great Western shares by the total number of Dow shares received. In support of such proposition the respondent cites *Commissioner v. Oliver* (C.A.A., 3rd Cir.), 78 Fed. (2d) 561; *Helvering v. Stifel* (C.C.A., 4th Cir.), [43] 75 Fed. (2d) 583; *Commissioner v. Von Gunten* (C.C.A., 6th Cir.), 76 Fed. (2d) 670, and *Commissioner v. Bolender* (C.C.A., 7th Cir.), 82 Fed. (2d) 591. Respondent submits that in those cases:

* * * the courts rejected the "first in first out" rule which the Commissioner had contended was applicable in the absence of identification. But under the rationale of those cases it is clear that attempts to establish the cost basis of the shares received by identification would be equally futile. Identification is permissible only when there is identity between the shares of stock sought to be identified. * * *

In *Raoul H. Fleischmann*, 40 B.T.A. 672, 688, we said:

* * * It is now well established that where stock of one corporation is exchanged for stock of another, in pursuance of a plan of reorganization, the basis of the shares surrendered (after adjustment for any recognized gain or loss) must be allocated equally to the shares acquired, and the cost of some particular lot of the old shares may not be allocated to some particular lot of the new shares. * * *

Under the rule identification of the shares of a recognized corporation with those of another corporation is immaterial. As said by the Circuit Court

of Appeals for the Third Circuit in *Arrott v. Commissioner*Fed. (2d).....(June 9, 1943):

We think it is the only sound rule. The old shares all have the same exchange value for the new ones no matter what they cost the taxpayer. He gets as much new stock for the share for which he paid \$80 as he does for the share for which he paid \$120. The old shares lose their identity when traded for the new, just as the money with which one buys a war bond loses its identity in the certificate, though to the purchaser some of it may have been a gift, some won on a horse race and the remainder earned by the sweat of his brow. The old shares are gone; the new shares in what is at least nominally a new company take their place. Each new share costs the taxpayer the quotient of the sum of the cost of the old shares divided by the number of new shares he receives.

The respondent's determination of basis is approved.

Decisions will be entered under Rule 50.

Entered: Aug. 1, 1943. [44]

The Tax Court of the United States
Washington

Docket No. 112225

AMELIA DAVIS BLOCH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

The computation of the respondent filed with the Court on September 2, 1943 has been examined and found to be in accordance with the determination of the Court as set forth in its report. Petitioner therefore joins with the respondent in praying that the Court enter its decision based upon such computation, reserving however the right to contest the correctness of such decision in the appellate courts as provided by statute.

W. H. ORRICK

CHAS. L. BARNARD

(Signature)

405 Montgomery Street

(Office Address)

San Francisco, 4, California

Attorneys for Petitioner.

[Endorsed]: T. C. U. S. Filed Oct. 2, 1943. [45]

The Tax Court of the United States
Washington

Docket No. 112225

AMELIA DAVIS BLOCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Memorandum Opinion entered August 14, 1943, the respondent herein having on September 2, 1943, filed a recomputation of tax and the petitioner having on October 2, 1943, filed an acquiescence therein, now therefore, it is

Ordered and Decided: That there is a deficiency in income tax for the calendar year 1940 in the amount of \$932.75.

(Signed) CHARLES P. SMITH
Judge.

[Entered]: Oct. 5, 1943. [46]

[Title of Tax Court and Cause.]

PETITION FOR REVIEW

Amelia Davis Bloch, taxpayer, the petitioner in this cause, by W. H. Orrick and Charles L. Barnard, counsel, hereby files her petition for a review by the United States Circuit Court of Appeals for the

Ninth Circuit of the decision of The Tax Court of the United States rendered on October 5, 1943 determining a deficiency in the petitioner's Federal income tax for the calendar year 1940 in the amount of \$932.75, and respectfully shows:

I.

Venue

The petitioner is an individual whose mailing address is 343 Sansome Street, San Francisco, California [47] and whose residence address is 20 Cherry Street, San Francisco, California. The income tax return of the petitioner for the calendar year 1940 was made and filed with the Collector of the First District of California whose office is and at all times herein mentioned was located at San Francisco, California.

II.

Nature of Controversy

The controversy involves the proper determination of petitioner's liability for Federal income taxes for the calendar year 1940, and, specifically, the proper basis to be used in determining the gain realized by petitioner from the sale by her in March, 1940, for a total selling price of \$33,264.24, of 212 common shares of The Dow Chemical Company, without par value, represented by Certificates Nos. C5822, CO18244 and CO18245, respectively for 100, 62 and 50 shares.

The circumstances under which petitioner acquired the shares so sold are as follows:

Petitioner, immediately prior to the statutory merger of Great Western-Electro Chemical Company with and into The Dow Chemical Company, hereinafter referred to, held the following numbered stock certificates of Great Western Electro-Chemical Company, representing respectively the [48] shares of said company below indicated, viz:

Certificate No.	Shares Represented
P392 - P398, inclusive	100 - \$20 par value Preferred Shares each.
PL-145	95 - \$20 par value Preferred Shares.
PL-414	70 - \$20 par value Preferred Shares.
273 - 274, inclusive	100 - no par value Common Shares each.
L-261	30 - no par value Common Shares.
L-1178	50 - no par value Common Shares.

On or before December 31, 1938 Great Western Electro-Chemical Company merged with and into The Dow Chemical Company, under the terms and conditions of an Agreement of Statutory Merger dated November 19, 1938 and pursuant to the applicable provisions of the laws of the State of California and the State of Michigan, being the states under the laws of which Great Western Electro-Chemical Company and The Dow Chemical Company respectively were incorporated. Under and by virtue of said Agreement of Statutory Merger, on the effective date thereof, the outstanding and issued shares of Great Western Electro-Chemical Company (excepting only shares held by The Dow Chemical Company or Great Western Electro-Chemical Company) were constituted and converted into full paid and non-assessable common shares,

without par value, of The Dow Chemical Company as follows, viz: [49]

Great Western Electro-Chemical Company Shares	The Dow Chemical Company Shares
1 Preferred Share—\$20 par value	3/16 Common Share, without par value
1 Common Share—without par value	1 Common Share, with- out par value

On or about January 31, 1939 said above mentioned certificates were cancelled and there was issued to petitioner the following numbered certificates of The Dow Chemical Company respectively in lieu of the following numbered certificates of Great Western Electro-Chemical Company so cancelled:

Dow Certificates Issued	Dow Common Shares Represented Thereby	Great Western Certificates Cancelled
C5822	100 shares)	(P392-398
C18244	62 shares)	(PL145
CLF171	3/16ths)	(PL414
C5823	100 shares	273
C5824	100 shares	274
CO18245	50 shares)	(L261
)	(L1178

Petitioner, in her income tax return for the calendar year 1940, determined the gain on said sale of said 212 common shares of The Dow Chemical Company, without par value, by assigning to the said shares the same basis as the basis of the identical shares of Great Western Electro-Chemical Company from which they were converted. The respondent held that for the purpose of determining said gain the basis of said 212 shares was the average of all shares of Great Western Electro-Chemical

Company held by petitioner on the effective date of [50] said statutory merger and, on the basis thereof and matters not here in controversy, determined a deficiency for the calendar year 1940 against taxpayer in the amount of \$1,035.53. Petitioner filed her petition with The Tax Court of the United States (then "United States Board of Tax Appeals") for a redetermination of said deficiency and said Court sustained the holding of the Commissioner and determined the aforementioned deficiency in the amount of \$932.75 against petitioner. The difference in the amount of the deficiency determined by the respondent (viz: \$1,035.53) and the amount of the deficiency determined by The Tax Court of the United States (viz: \$932.75) arises from the decision of The Tax Court of the United States in respect of said matters not here in controversy, which said decision as to said other matters is based on a stipulation between the parties.

W. H. ORRICK

CHARLES L. BARNARD

Counsel for Petitioner.

W. H. ORRICK

CHARLES L. BARNARD

405 Montgomery Street

San Francisco, 4, Calif. [51]

State of California

City and County of San Francisco—ss.

W. H. Orrick, being first duly sworn, says that he is one of the counsel of record in the above entitled

cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements therein contained and that the statements made are true to the best of his knowledge, information and belief.

W. H. ORRICK

Subscribed and sworn to before me this 29th day of December, 1943.

[Seal] ANNE F. SURFT

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: T.C.U.S. Filed Jan. 3, 1944. [52]

[Title of Tax Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California

City and County of San Francisco—ss.

E. J. Demings, being first duly sworn, deposes and says:

That he is a clerk in the employ of W. H. Orrick, Esq., one of the counsel representing petitioner in the above-entitled matter; that he is a citizen of the United States of America, over the age of twenty-one years and not a party to the within action.

That on the 5th day of January, 1944 he duly placed, in a sealed envelope addressed to J. P. Wenchell, Chief of Counsel, Bureau of Internal Revenue, Washington, D. C. a notice of the filing of

a Petition for Review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision [53] of The Tax Court of the United States heretofore rendered in the above-entitled cause, to which was attached a conformed copy of said petition; that a copy of said notice is attached hereto; that on said date he duly placed said envelope containing said notice and said copy of said petition for review, with the required postage thereon duly prepaid, in the United States mail at San Francisco, California, and that on said date there was and is a regular communication by United States mail between the City and County of San Francisco and the City of Washington, D. C.

E. J. DEMINGS

Subscribed and sworn to before me this 11th day of February, 1944.

HAZEL E. THOMPSON,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires October 14, 1946.

[Endorsed]: T.C.U.S. Filed Feb. 1, 1944. [54]

[Title of Tax Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of The Tax Court of the United States:

You are requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with refer-

ence to the petition for review heretofore filed by petitioner in the above cause, a transcript of the record in the above cause prepared and transmitted as required by law and by the rules of said court and to include in said transcript of record the complete record and all the proceedings and evidence in the above cause, including, without limiting the generality of the foregoing, the following documents or certified copies thereof, to wit:

1. The docket entries of all proceedings before The Tax Court of the United States, formerly known as the "United States Board of Tax Appeals".

2. Pleadings before The Tax Court of the United States, formerly known as the "United States Board of Tax Appeals", as follows:

(a) Petition for redetermination.

(b) Answer of respondent. [55]

3. Stipulation as to evidence, dated January 30, 1943, with all exhibits attached thereto.

4. Transcript of proceedings before The Tax Court of the United States, formerly known as the "United States Board of Tax Appeals".

5. The findings of fact and opinion of The Tax Court of the United States, formerly known as the "United States Board of Tax Appeals".

6. Petitioner's stipulation as to respondent's computation.

7. Decision of The Tax Court of the United States, formerly known as the "United States Board of Tax Appeals".

8. Petition for review filed by the petitioner in the above cause.

9. This Praecipe.
 10. Affidavit of mailing.
 (s) W. H. ORRICK
 (s) CHARLES L. BARNARD
 Counsel for Petitioner.

[Endorsed]: T.C.U.S. Filed Feb. 1, 1944. [56]

[Title of Tax Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 56, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 16th day of February, 1944.

[Seal] B. D. GAMBLE, Clerk,
 The Tax Court of the United
 States.

[Endorsed]: No. 10697. United States Circuit Court of Appeals for the Ninth Circuit. Amelia Davis Bloch, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed March 4, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10697

AMELIA DAVIS BLOCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STATEMENT OF POINTS TO BE RELIED ON

To the United States Circuit Court of Appeals for
the Ninth Circuit and the Honorable Judges
thereof:

The Petitioner hereby states and sets forth the
following as the points on which she intends to rely
on the above entitled appeal:

1. The basis to Petitioner of the 212 common

shares of The Dow Chemical Company (hereinafter called "Dow"), sold by her in March, 1940 (the gain from which sale is the subject matter of the above entitled proceeding) is the same as the basis to Petitioner of the identical shares of Great Western Electro-Chemical Company (hereinafter called "Great Western") from which they were constituted and converted—i.e. for which they were exchanged—on the statutory merger of Great Western with and into Dow.

2. The Court below (viz: The Tax Court of the United States—formerly known as the Board of Tax Appeals) erred in holding that the basis to Petitioner of said 212 common shares of Dow is to be determined by dividing the total cost to Petitioner of the Great Western shares acquired by Petitioner at different times and at different prices by the total number of Dow shares received by her and then multiplying that amount by the Dow shares sold by petitioner.

3. On the effective date of the Agreement of Merger dated November 19, 1938, between Great Western and Dow and pursuant to the terms and provisions of said Agreement and the applicable provisions of law of the States of California and Michigan, the outstanding Great Western shares (including those held by Petitioner) were constituted and converted into Dow common shares on the basis of one Great Western preferred share, \$20 par value into 3/16ths of one Dow common share and one Great Western common share without par value into one Dow common share. On and after

said effective date and by virtue of the foregoing, each outstanding stock certificate which immediately prior to said effective date represented Great Western preferred or common shares (including each such certificate held by Petitioner) thereupon represented respectively the Dow common shares into which such Great Western shares had been so constituted and converted.

4. Within the meaning of Section 113(a)(6) of the Internal Revenue Code, the constitution and conversion of Great Western shares into Dow common shares mentioned in paragraph 3 above was the "exchange" of Great Western shares for Dow shares on the "reorganization" of Great Western and Dow and, accordingly, under said Section 113(a)(6) the basis to Petitioner of the Dow shares, respectively represented on and after the effective date of said agreement of merger by each outstanding Great Western certificate held by Petitioner on said effective date was the same as the basis to Petitioner of the Great Western shares represented thereby immediately prior to said effective date.

5. The certificate exchange in 1939 was merely an exchange of certificates each representing Dow common shares and on such exchange the certificates received by Petitioner and the shares represented thereby can be identified with, and traced to, specific certificates surrendered by Petitioner on such exchange and the shares represented thereby.

6. Even though Petitioner be mistaken in her contention that under Section 113(a)(6) of the Internal Revenue Code, the "exchange" of Great

Western shares for Dow shares on the "reorganization" of Great Western and Dow was the constitution and conversion of Great Western shares into Dow shares on the effective date of the agreement of merger and it be held that the "exchange" within the meaning of said section was the certificate exchange in 1939, nevertheless, the basis to Petitioner of said 212 Dow common shares sold by her in March, 1940 is the same as the basis to Petitioner of the identical Great Western shares for which they were exchanged. On said certificate exchange, Petitioner exchanged specific Great Western certificates and the specific shares represented thereby for specific Dow certificates and the specific shares represented thereby and, accordingly, under said Section 113(a)(6), the basis to Petitioner of said 212 Dow common shares was the same as the basis to her of the specific shares for which they were so exchanged.

7. Each Great Western certificate immediately prior to the effective date of the aforesaid statutory merger between Dow and Great Western, represented Great Western preferred or common shares and on or after said effective date represented Dow common shares. The merger did not affect the basis of any such certificate or of the shares represented thereby. Accordingly, the basis to Petitioner of the Dow common shares represented on and after the effective date of said statutory merger by each such certificate held by Petitioner was the same as the basis to Petitioner of the Great Western shares

(preferred or common) represented by each such certificate immediately prior to said effective date.

8. On the statutory merger Great Western preferred and common shares were constituted and converted into Dow shares. Accordingly, the basis of each such Dow share was the same as the basis of the Great Western shares from which they were constituted and converted.

Respectfully submitted,

W. H. ORRICK

CHARLES L. BARNARD

Attorneys for Petitioner

405 Montgomery Street

San Francisco, 4, Calif.

[Endorsed]: Filed March 9, 1944. Paul P. O'Brien, Clerk.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10696

LOUIS BLOCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

No. 10697

AMELIA DAVIS BLOCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION

It is hereby stipulated by and between the parties to the above entitled proceeding subject to the approval by the Court as follows:

1. That only the record in the case of Amelia Davis Bloch (Docket No. 10697) shall be printed and only said case shall be briefed and presented to the Court in argument for decision.

2. The decision of the Court in the case of Louis Bloch (Docket No. 10696) shall be stayed until the decision in said case of Amelia Davis Bloch (Docket No. 10697) becomes final within the meaning of

Section 1140 of the Internal Revenue Code, and after the decision in said case of Amelia Davis Bloch (Docket No. 10697) shall so become final, either party in the case of Louis Bloch (Docket No. 10696) may, upon regular notice to the other party and upon the basis of this stipulation and a certified copy of said final decision in the case of Louis Bloch (Docket No. 10696), apply for an order directing the entry in the case of Louis Bloch (Docket No. 10696) of judgment corresponding to the result in the case of Amelia Davis Bloch (Docket No. 10697).

W. H. ORRICK

CHAS. L. BARNARD

Attorneys for Petitioners

405 Montgomery Street

San Francisco, 4, Calif.

SAMUEL O. CLARK, JR.,

Assistant Attorney General,

Attorney for Respondent.

So Ordered:

FRANCIS A. GARRECHT

Judge of the above-entitled
Court.

[Endorsed]: Filed March 28, 1944. Paul P.
O'Brien, Clerk.

